

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>GEORGE ROGERS</b>	)	
Claimant	)	
VS.	)	
	)	
<b>LEARJET, INC.</b>	)	Docket No. 168,216
Respondent	)	
Self-Insured	)	

**ORDER**

Respondent appeals the Award of Administrative Law Judge John D. Clark dated January 14, 1997.

**APPEARANCES**

Claimant appeared by and through his attorney, Russell B. Cranmer of Wichita, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, Edward D. Heath, Jr., of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

What is the nature and extent of claimant's injury and/or disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant met with personal injury by accident while employed with respondent on June 25, 1992. Subsequent to claimant's accident and after receiving medical care, claimant and respondent entered into an agreed Award dated July 23, 1993, which returned the claimant to work with respondent at a comparable wage with accommodation. When claimant initially attempted to return to work he was placed upon a weight restriction of 20 to 30 pounds. Claimant was advised by his supervisors that restriction could not be accommodated. Claimant then returned to his treating physician and was provided with a modified weight restriction of 50 pounds. Claimant initially thought he had been returned to work without restrictions but later found out the 50-pound weight limit had been placed upon him. Respondent and respondent's supervisors were aware of the new weight restrictions when claimant returned to work. Claimant continued working for respondent through April 29, 1995, at which time he was laid off due to an economic layoff.

On August 17, 1995, claimant filed his application for review and modification under K.S.A. 1991 Supp. 44-528 alleging entitlement to additional work disability.

The Administrative Law Judge granted claimant an increase in the Award, finding claimant entitled to work disability subsequent to his layoff from respondent. The Appeals Board finds the Award of the Administrative Law Judge granting claimant additional work disability subsequent to April 29, 1995, should be, and is hereby, affirmed.

A factual situation similar to this was decided by the Kansas Court of Appeals in Lee v. Boeing Co., 21 Kan. App. 2d 365, 899 P.2d 516 (1995). In Lee claimant was returned to work in an accommodated position and worked for the respondent for a period of time before losing his job due to an economic layoff. The Court of Appeals found that the legislature intended, under K.S.A. 1991 Supp. 44-510e, to prevent a worker, who had returned to work, from double dipping, i.e. receiving substantial post-injury wages while also collecting work disability benefits.

K.S.A. 1991 Supp. 44-510e states in part:

"Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent

of permanent partial general disability shall not be less than [the] percentage of functional impairment. . . There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury.”

Subsequent to claimant’s layoff in Lee the Court granted work disability finding the presumption of no work disability ceased to exist. Here, as in Lee, subsequent to April 29, 1995, claimant was no longer earning a wage comparable to his preinjury wage. In following the logic of Lee the Appeals Board finds that claimant became entitled to work disability at the time of his layoff on April 29, 1995.

In considering the nature and extent of claimant’s injury and/or disability the Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein. The Administrative Law Judge, in granting claimant a permanent partial disability of 50 percent subsequent to April 29, 1995, considered both the opinions of Mr. Jerry Hardin and Ms. Karen Terrill as to claimant’s loss of ability to perform work in the open labor market and loss of ability to earn comparable wages. The Appeals Board, in adopting the Award of the Administrative Law Judge, finds the claimant is entitled a 50 percent permanent partial general body disability and awards same.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated January 14, 1997, should be, and is hereby, affirmed and the claimant, George Rogers, is granted an award against the respondent, Learjet, Inc., for an accidental injury sustained on June 25, 1992.

Claimant is entitled to 12.29 weeks temporary total disability compensation at the rate of \$289 per week in the amount of \$3,551.81 followed by 136 weeks permanent partial disability at the rate of \$37.07 per week totaling \$5,041.52 for an 8% permanent partial general body disability per the agreed Award of the parties, followed thereafter by 266.71 weeks permanent partial disability at the rate of \$231.69 per week in the amount of \$61,794.04 for a 50% permanent partial general body disability making a total award of \$70,387.37.

As of April 29, 1997, there will be due and owing to claimant 12.29 weeks temporary total disability compensation at the rate of \$289 per week in the amount of \$3,551.81 followed by 136 weeks permanent partial disability compensation at the rate of \$37.07 per week in the amount of \$5,041.52 plus 104.57 weeks permanent partial disability

compensation at the rate of \$231.69 per week in the amount of \$24,227.82 for a total due and owing of \$32,821.15 which is ordered paid in one lump sum minus amounts previously paid. Thereafter the remaining balance of \$37,566.22 shall be paid at the rate of \$231.69 per week for 162.14 weeks until further order of the Director or until fully paid.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Gene Dolginoff Associates, Ltd.	
Deposition of Daniel D. Zimmerman, M.D.	\$177.30
Deposition Services	
Transcript of motion hearing	\$ 53.50
Transcript of motion hearing	\$ 53.50
Satterfield Reporting Services	
Deposition of George N. Rogers	\$193.50
Deposition of Jerry D. Hardin	\$202.50
Don K. Smith & Associates	
Deposition of Karen Crist Terrill	\$144.50

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1997.

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BOARD MEMBER

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BOARD MEMBER

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c: Russell B. Cranmer, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director